

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, EASTERN DIVISION**

VFS LEASING CO.

Plaintiff,

vs.

G.F. KELLY, INC. d/b/a KELLY
TRUCKING; and GUY KELLY,

Defendants

CIVIL ACTION NO.
3:06cv638-SRW

MOTION TO CONTINUE SUMMARY JUDGMENT PROCEEDINGS


COMES NOW the Plaintiff, VFS Leasing Co., and moves the Court to continue the summary judgment proceedings and extend the briefing schedule for its summary judgment motion. In support of this motion to continue, Plaintiff states as follows:

1. Plaintiff moved for summary judgment on November 28, 2006. After receiving extensions to conduct discovery and submit a response in opposition, Defendants submitted their opposition to summary judgment on February 13, 2006. Under this Court's Scheduling Order, Plaintiff may file its reply brief in support of summary judgment on or before February 26, 2007.

2. Defendants' opposition to summary judgment raises the affirmative defense of mitigation of damages. Defendants bear the burden of proof on this defense. *Prudential Ballard Realty Co. v. Weatherly*, 792

MOTION GRANTED

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THIS 22nd DAY OF February, 20 07

UNITED STATES MAGISTRATE JUDGE